D.B. CIVIL SPECIAL APPEAL NO.790/06
(Yusuf Khan Vs. Municipal Board, Mount Abu & Ors.)

Date of order : 19.12.2006

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. B.R. Mehta, for the appellant.

We have heard learned counsel for the appellant.

This appeal is directed against the judgment of the learned Single Judge dated 12.9.2006.

The land in question belongs to the petitioner appellant. By order dated 25.8.2003, 453.75 (454 Sq. Meters) of the land was converted for non-agricultural use. This was done after securing the land from the petitioner as Khatedar of the land and was allotted by the impugned order Annexure-4 where by petitioner has set up a Restaurant for which he has has moved an application for permission before the competent authority in form “A”.

Pending application for grant of license by Annexure-6, the petitioner was required to close the Restaurant within 24 hours failing which the petitioner was cautioned that the Restaurant would be removed, if that is not voluntarily closed. This led

to filing of the writ petition for quashing of the order Annexure-6 and restraining the respondents from interfering with the peaceful possession of the land in question and also to issue mandamus to the competent authority for deciding his application for grant of licence for setting up a Restaurant on the land in question.

An interim relief was also claimed instead of aforesaid reliefs.

However, learned counsel for the petitioner states that notwithstanding the aforesaid prayer, the petitioner has already closed the restaurant. If that be so, there is hardly any requirement of staying the proceedings in pursuance of Annexure-6. So far as determination of application for grant of an licence to run restaurant is concerned, the petitioner is entitled to mandamus to the competent authority to decide his application with reasonable time.

The apprehension of the petitioner that in the grab of the order dated 8.11.2005 Annexure-6, the construction raised on the land other than the restaurant is threatened to be removed. We are of the opinion that this apprehension ought not to prevail with the petitioner because no such order has been issued by the respondents to remove other construction nor any allegations has been made that other

construction are illegal. If the respondent Municipal Council considers any other construction raised by the petitioner-appellant contrary to law and requires to be removed, it is expected from the respondents that reasonable notice and reasonable opportunity of hearing be given to the petitioner before any such order is passed so that the petitioner is not left remedy less.

So far as the subject matter of Annexure-6 on the basis of statement made by the learned counsel for the appellant that he has already closed the restaurant, the question of demolition of any construction for that reason would not arise. The competent authority is required to consider the application for grant of license made by the petitioner appellant within one month from the date this order is produced before it and apart from subject matter of Annexure-6, petitioner's other land being not subject matter of notice Annexure-6, the respondents as a public authority are required to act in accordance with the law. They would give a reasonable notice and reasonable opportunity of hearing to the petitioner.

With the aforesaid directions, the appeal stands disposed of as no interference with the order of the learned Single Judge is required to be made.

We are further of the opinion that in view of the order passed above, the writ petition itself stands disposed of as the same has become infructuous.

(GOPAL KRISHAN VYAS), J. (RAJESH BALIA), J.

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